

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF SECRETARY

In the Matter of )  
)  
Amendment of the Commission's Rules) WT Docket 96-162  
to Establish Competitive Service )  
Safeguards for Local Exchange Carrier )  
Provision of Commercial Mobile Radio )  
Services )  
)  
Implementation of Section 601(d) of the )  
Telecommunications Act of 1996, and )  
Sections 222 and 251(c)(5) of the )  
Communications Act of 1934 )

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REPLY COMMENTS OF AMERITECH

Ameritech submits this reply to comments submitted with respect to the Commission's notice of proposed rulemaking in the above-captioned proceeding.<sup>1</sup>

As Ameritech noted in its initial comments, the proper question before the Commission is whether any structural separation requirement is necessary for BOC or LEC provision of any commercial mobile radio service ("CMRS") service, given the fact that no party has shown that a nonstructural safeguard regime -- similar to that imposed by the Commission on BOC provision of CPE and enhanced services -- would not be sufficient to address any concerns about improper conduct.

Nonetheless, certain commenting parties continue to conjure up "ghosts" of potential

<sup>1</sup> In the Matter of Amendment of the Commission's Rules to Establish Competitive Service Safeguards for Local Exchange Carrier Provision of Commercial Mobile Radio Services; Implementation of Section 601(d) of the Telecommunications Act of 1996, and Sections 222 and 251(c)(5) of the Communications Act of 1934; Amendment of the Commission's Rules to Establish New Personal Communications Services; Requests of Bell Atlantic-NYNEX Mobile, Inc., and U S West, Inc., for Waiver of Section 22.903 of the Commission's Rules, WT Docket No. 96-162, GEN

abuse as a scare tactic in an attempt to induce the Commission to do everything but repeal the provisions of the Telecommunications Act of 1996 ("TA 96") that specifically permit the joint marketing of CMRS and landline services. They would have the Commission retain outmoded structural separation to continue to handicap LECs' ability to serve their customers through CMRS offerings. These comments should be dismissed as contributing nothing new to the debate. In fact, all of these arguments were made and rejected more than a decade ago when the Commission eliminated the Computer II separate subsidiary requirement for BOC provision of CPE and enhanced services.

\* \* \*

The Public Utilities Commission of Ohio ("PUCO") alleges that a separate subsidiary requirement is necessary and points to the joint federal/state audit of the Ameritech Operating Companies' transactions with Ameritech Services, Inc. as support for its position. As a result of that audit, a consent decree was entered into between the Ameritech Operating Companies, the FCC, the PUCO, and the Public Service Commission of Wisconsin by which Ameritech agreed to revise internal documentation procedures.<sup>2</sup> However, there were no rules violations found and no corrections to prior cost allocations were effected as a result of the consent decree. If it says anything, the audit shows that the current safeguards work. In addition, the Commission has separately found:

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Docket No. 90-314, Notice of Proposed Rulemaking, Order on Remand, and Waiver Order, FCC 96-319 (released August 13, 1996) ("NPRM").

<sup>2</sup> See, Consent Decree Order, AAD 95-75 (released June 23, 1995).

Our experience to date, however, has not disclosed a systematic pattern of anti-competitive abuses by independent LECs or the BOCs that would indicate that our safeguards are ineffective.<sup>3</sup>

Further, however, the PUCO argues that the Commission should consider specific allegations of Ameritech wrongdoing and conclude that structural safeguards are necessary. However, in neither case cited by the PUCO has Ameritech been found to have done anything wrong. The PUCO notes that Cellnet, a cellular retailer, has filed a complaint against four cellular wholesalers licensed in Ohio.<sup>4</sup> However, Ameritech denies any wrongdoing with respect to Cellnet and points out that, although Cellnet's complaint has been pending for three years, no impropriety has ever been found on Ameritech's part. In addition, the PUCO cites a complaint by Voice-Tel which alleged improper anticompetitive conduct.<sup>5</sup> While the PUCO notes that the parties stipulated to a settlement "which provided for numerous safeguards," it fails to mention that none of Ameritech's underlying procedures were required to be changed. In short, allegations, by themselves, should never form the basis for any Commission decision in this, or any other case.

The PUCO also maintains that the individual states should have the discretion to impose their own structural separate affiliate requirements on LEC provision of CMRS, even if the FCC should elect not to impose such a requirement on its own. Ameritech respectfully suggests that the Commission should not adopt such a

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<sup>3</sup> In the Matter of Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934, as amended, CC Docket No. 96-149, Notice of Proposed Rulemaking, FCC 96-308 (released July 18, 1996) at ¶146.

<sup>4</sup> PUCO at 5.

<sup>5</sup> Id. at 8-9.

proposal. Facilitating commerce in this area necessitates, at a minimum, a single consistent set of rules nationwide. The PUCO's proposal, however, would create a hodgepodge of regulations in which a single provider of CMRS services would be forced to attempt compliance with different structural requirements in different states. The Commission has preempted the states from imposing structural separation requirements for BOC provision of CPE and for any portion of enhanced services that are offered both intrastate and interstate. That preemption was sustained by the United States Court of Appeals in the case of enhanced services.<sup>6</sup> National uniformity is even more imperative in the case of radio services where licenses do not necessarily comport with state boundaries. A single provider of CMRS that operates in contiguous states must be able to utilize the same operating structure for the provision of services across its service area. Different state structural requirements would result in necessitating that different legal entities provide the service, with the attendant inefficiencies and inconvenience to customers.

\* \* \*

Comcast and AirTouch argue that the Commission's Part 64 rules are no longer effective and that the Commission should, therefore, require LECs to fully disclose all costs and revenues associated with CMRS "on a line-item basis."<sup>7</sup> The Commission should dismiss the proposal because it amounts to an unsupported attack on the Commission's Part 64 regime and a self-serving attempt to gain access

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<sup>6</sup> People of State of California v. FCC, 39 F.3d 919 at 932 (9th Cir. 1994) ("California III"). The preemption was not challenged in the case of CPE.

<sup>7</sup> Comcast at 13, AirTouch at 6.

to competitively sensitive financial information about nonregulated activity.<sup>8</sup> The Commission has consistently found that its cost allocation rules are and have been working appropriately.<sup>9</sup> Moreover, in considering the adequacies of the Commission's Computer III safeguards, the Court of Appeals specifically found that

the FCC has taken specific affirmative steps designed to deter and detect cross-subsidization by introducing price caps as well as further strengthening its cost accounting rules. We conclude that with the implementation of these measures, the FCC . . . has demonstrated that the BOCs' incentive and ability to cross-subsidize will be significantly reduced.<sup>10</sup>

Since there is no evidence of any breakdown with the cost allocation rules, the suggestion that the Commission must tighten its accounting safeguards should be ignored.

Moreover, with the continuing entry of competitive providers of local exchange and access services, and especially with the ability of competing carriers to obtain interconnection and unbundled network elements at cost-based rates, incumbent LECs are severely limited in their ability to successfully implement a cross-subsidization scheme that involves raising rates for basic local and exchange access services. Moreover, as alluded to by the California III Court, for those carriers under price caps -- and especially for those, such as Ameritech, that are under price caps at both the federal and state levels -- the very idea of cross-subsidy makes no sense

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<sup>8</sup> Disclosure specific financial information about individual nonregulated activities far exceeds the Commission's requirements in either Part 32 (Uniform System of Accounts) or Part 64 (Cost Allocation).

<sup>9</sup> See n.3, *supra*. See also, In the Matter of Implementation of Accounting Safeguards Under the Telecommunications Act of 1996, CC Docket No. 96-150, Notice of Proposed Rulemaking (released July 18, 1996) at ¶27.

<sup>10</sup> California III at 926.

since the permissible level for rates for basic services is not dependent on underlying costs.

\* \* \*

AT&T, calls for retention of the current separate subsidiary requirement, but it bases its argument solely on the "incentives and ability of the BOCs to act in an anticompetitive manner."<sup>11</sup> Again, however, those same arguments were made with respect to the BOCs' provision of CPE and enhanced services, and yet, in both cases, the Commission's decision to eliminate the Computer II separate subsidiary requirement has resulted in no damage to, but rather has advanced, the competitive environment for the provision of both CPE and enhanced services.

AT&T further argues that the Commission should "also require that all entities offering service similar the BOC CMRS affiliate be permitted to market and sell the BOC's local exchange service."<sup>12</sup> AT&T argues that this requirement is similar to the one contained in §272(g)(1) of the Communications Act, as amended. AT&T's rationale is again flawed. Section 272(g)(1) deals with the case of a mandatory separate BOC subsidiary that markets the BOC's telephone exchange services. Such a requirement has no bearing in this case where Congress chose not to require that CMRS provided by a separate affiliate. Moreover, if Congress had intended that BOCs should be required to employ CMRS providers as sales agents, it would have said so. Finally, however, any CMRS provider that wants to jointly provide local exchange

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<sup>11</sup> AT&T at 5.

<sup>12</sup> Id. at 21.

services with its own CMRS can do so by simply reselling the BOC's local exchange service under the auspices of §251(c)(4).

\* \* \*

In arguing for the tightening of the separate subsidiary rules, MCI alleges that "all of the BOCs' cellular affiliates have refused interconnection for in-region resale service."<sup>13</sup> That MCI would use such an allegation in support of its case is curious since the Commission itself has very specifically declined to require direct interconnection arrangements between CMRS providers. In addition to the current uncertainty as to how CMRS networks will develop and proliferate, the Commission concluded:

[W]e do not think that the present market conditions indicate that it is necessary to impose a general interstate interconnection obligation at this time. The fact that interconnection is already available through LEC facilities reduces the potential for CMRS providers to use denial of interconnection as an anticompetitive tool against their competitors. If interconnection between CMRS providers could only be accomplished through direct links (without access to LEC facilities), one CMRS carrier could prevent a second from terminating calls on the first carrier's network or from receiving calls from customers of the first network, thus limiting the service the second carrier could offer its customers. If the first carrier were much larger than the second, lack of interconnection would be more harmful to the second. With interconnection available through the LEC, however, no CMRS carrier can limit the service that another can offer.<sup>14</sup>

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Finally, CMT argues that LECs that obtain customer consent to release customer CPNI to their CMRS affiliates should be obligated to share that CPNI with

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<sup>13</sup> MCI at 4.

<sup>14</sup> In the Matter of Interconnection and Resale Obligations Pertaining to Commercial Mobile Radio Services, CC Docket No. 94-54, Second Notice of Proposed Rulemaking, FCC 95-149, 10 FCC Rcd. 10666 (released April 20, 1995) at ¶31.

any requesting non-affiliated carrier.<sup>15</sup> Such a suggestion makes no sense and flies in the face of the customer's privacy interests. If the customer specifically authorizes a LEC to release the customer's CPNI to a particular entity -- whether it is the LEC's CMRS operations or a third party -- the LEC should not be required to disclose that information to anyone else absent the customer's specific authorization. To require the LEC to do so would violate its customer's privacy expectations. Rather, as suggested by Ameritech in its comments, §222 of the Communications Act, as amended, assures that there will be no competitive inequity -- i.e., §222(c)(2) requires any telecommunications carrier to disclose a customer CPNI to any other party designated by the customer. If the customer's consent is required for use or disclosure of CPNI, then it should be permissible for the LEC to use or disclose the information only to the extent authorized by the customer, as long as any party is free to get the same information if the customer authorizes its release.

\* \* \*

In conclusion, as Ameritech noted in its initial comments, in setting the requirements for LEC provision of CMRS, the Commission should seriously consider the success of the nonstructural safeguards it adopted almost a decade ago for BOC provision of both CPE and enhanced services. The Commission should adopt a minimalist approach and impose only those restrictions that are absolutely necessary to ensure the fair and efficient operation of the marketplace. Specifically, the

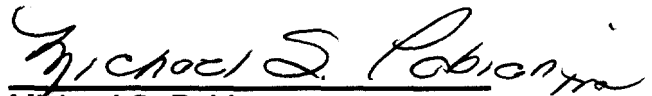
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<sup>15</sup> Comcast at 16.



Commission should immediately eliminate the separate subsidiary requirement contained in §22.903 of its rules and should, in its place, adopt only those minimal nonstructural safeguards necessary for LEC provision of CMRS without the requirement of any separate affiliate.

Respectfully submitted,

A handwritten signature in cursive script, reading "Michael S. Pabian".

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Dated: October 24, 1996

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CERTIFICATE OF SERVICE

I, Todd H. Bond, do hereby certify that a copy of the foregoing Relpy Comments of Ameritech has been served on the parties listed on the attached service list, via first class mail, postage prepaid, on this 24th day of October 1996.

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